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cost,⁸ cost of reproduction of improvements, depreciation,⁹ "going concern" value,⁹ and the like. Where there are buildings on the land, an important element to be considered is the cost of reproduction. As to when such evidence is admissible, the law is in some confusion. Where a city is condemning a water plant, reproductive cost is usually the controlling, if not the only, basis of valuation.¹⁰ But the New York rule has been that it is inadmissible in evidence,¹¹ except, possibly, in the cross-examination of an expert on real estate values. This rule, however, seems unnecessary; for the jury is as competent as the expert to determine whether the cost of reproduction would influence the bid of the imaginary reasonable buyer. And in a recent New York eminent domain proceeding, direct evidence of the reproductive cost of tenements on the premises was held admissible. *Matter of Blackwell's Island Bridge*, 91 N. E. 278 (N. Y.). The court adopted as the sole test, whether the structures were so adapted to the land as to increase its value proportionately to the cost of the structures. This is but another way of stating the imaginary reasonable buyer test.

It may be supposed that an eccentric millionaire has built an expensive country establishment distant from any fashionable resort or transportation, so that no reasonable buyer would conceivably pay anything like the amount expended. Surely a railroad condemning the property could not limit compensation to the enhanced value of the land in the eyes of a business man; it is submitted that reproductive cost should here also be evidence of value. Although the exact problem seems not to have arisen,¹² it causes one to doubt the infallibility of the reasonable buyer test.

IMMUNITY FROM JUDICIAL CONTROL OF EXECUTIVE OFFICERS AND MEMBERS OF THE LEGISLATURE. — A suit against an executive officer may be really a suit against the state,¹ and, if so, may be maintained only with the state's consent. Equally fundamental is the principle that if the act sought to be enforced involves the determination of a political question, the courts have no jurisdiction of the subject matter of that question.²

improbable use will not be considered. A owned an area of land over which B had an easement of light, air, and access. The city condemned it for street purposes. A and B joined in a suit demanding the full current value of the land. B's easement was not materially damaged. The amount demanded involved the valuation for use with the easement removed; *i. e.*, for building purposes. The prospect of B's releasing the easement was improbable. *Held*, that the plaintiffs are not entitled to the compensation demanded. *Boston Chamber of Commerce v. Boston*, U. S. Sup. Ct., April 4, 1910.

⁸ *Brown v. Calumet River Ry. Co.*, 125 Ill. 600; *St. L. & S. F. Ry. v. Smith*, 42 Ark. 265. Original cost is of varying weight as evidence of cash value; unless the purchase was recent, the evidence is inadmissible. *Lanquist v. Chicago*, 200 Ill. 69.

⁹ See *Gloucester Water Co. v. Gloucester*, 179 Mass. 365.

¹⁰ See *Kennebec Water District v. Waterville*, 97 Me. 185; *Newburyport Water Co. v. Newburyport*, 168 Mass. 541; *Gloucester Water Co. v. Gloucester*, *supra*.

¹¹ *Matter of Simmons*, 130 N. Y. App. Div. 350, affirmed, 195 N. Y. 573.

¹² See *Wall v. Platt*, 169 Mass. 398.

¹ *Hagood v. Southern*, 117 U. S. 52.

² *Mississippi v. Johnson*, President, 4 Wall. (U. S.) 475; *Dennett*, Petitioner, 32 Me. 508. A political act is one committed by the sovereign to the final determination of a department other than the judicial department.

Where neither of these difficulties is involved an executive officer, other than the chief magistrate, is subject to judicial process. Cabinet ministers of England have, at the suit of the subject, been compelled to act by mandamus³ and restrained by injunction.⁴ In this country one court has held that the occasion and manner of performing any duty imposed by statute on a constitutional member of the executive is a political question to be decided by him.⁵ But the general rule is that an executive officer as high in rank as the head of a department may be compelled by the courts to perform a ministerial act.⁶

If the chief executive officer is a king, as sovereign he is not subject to the courts' commands.⁷ Though the President of the United States and the governors of the several states are not sovereigns, the difficulties in the courts taking jurisdiction of their acts and issuing process against them are many. It is universally admitted that no court can enforce its process by imprisonment of the chief executive's body.⁸ And, as regards duties expressly imposed by constitution or statute on the chief executive as such, there is a more serious jurisdictional objection: from the tripartite division of powers in the federal and state constitutions, resulting in the impotence of the courts actually to control the President or governor, the meaning of the constitutions must be taken to be that as to such duties the decision of the chief executive is final.⁹ Therefore, unless the constitution authorizes the giving of advisory opinions by the court, the chief magistrate's submission of the question to its determination should not alter the situation.¹⁰ Another question is presented, however, when there is considered the liability of the chief executive during incumbency for breach of such duties as are imposed by law upon all citizens. The establishment of a court of impeachment doubtless gives it, during incumbency, exclusive jurisdiction of any crime committed by him. Moreover it is conceded that if the President or governor is served with a subpoena, it is for him to determine the public expediency of his appearing in court or producing the desired documents.¹¹ But it is submitted that the court loses no dig-

³ The King *v.* The Lords Commissioners of His Majesty's Treasury, 5 N. & M. 589.

⁴ *Ellis v. Earl Grey*, 6 Sim. 214.

⁵ *State ex rel. The County Treasurer of Millelacs County v. Dike*, 20 Minn. 363.

⁶ *Kendall v. U. S.*, 12 Pet. (U. S.) 524; *Larcom v. Olin*, 160 Mass. 102; *People ex rel. Chatterton v. Secretary of State*, 58 Ill. 90.

⁷ For centuries, the claims of subjects against the King of England have been, with the King's consent in each case, adjudicated upon by a petition of right addressed usually to the King in his High Court of Chancery. *Taylor v. Attorney General*, 8 Sim. 413. The procedure is now regulated by statute, 23 & 24 VICT. c. 34.

⁸ See *People ex rel. Sutherland v. Governor*, 29 Mich. 320; *Mississippi v. Johnson*, President, *supra*.

⁹ *Hawkins v. Governor*, 1 Ark. 570; *State ex rel. Low v. Towns*, Governor, 8 Ga. 360; *People ex rel. Sutherland v. Governor*, *supra*. A minority of states hold that the judicial power extends to commanding the governor to perform a ministerial act. *Harpending v. Haight*, 39 Cal. 189; *Cotten v. Ellis*, Governor, 7 Jones L. (N. C.) 545. On the theory that the court must determine whether the incumbent in fact of the office is legally the governor, *quo warranto* proceedings have been maintained. *Attorney General ex rel. Bashford v. Barstow*, 4 Wis. 567; *State ex rel. Thayer v. Boyd*, 31 Neb. 682.

¹⁰ *State v. Stone*, 120 Mo. 428; *State v. Dike*, *supra*. *Contra*, *People ex rel. Stickney v. Palmer*, Governor, 64 Ill. 41.

¹¹ *U. S. v. Burr*, Fed. Cas. No. 14,692 a; *Thompson v. The German Valley Railroad Co.* 22 N. J. Eq. 111. *Cf.* *Beatson v. Skene*, 5 H. & N. 838. In all these cases the original process of subpoena issued, but the court refused to enforce its order.

nity in issuing process, if the possible disobedience of the executive is based upon a legal right. In a British colony, the inability to levy execution on the person of governor during incumbency has not prevented an adjudication on an individual's right against him.¹² And in this country there seems to be no reason why the law should be otherwise; for it does not follow from the constitutional division of powers that the chief magistrate is given the final determination of his private rights and duties.¹³

The legislative department must, of course, be given final determination of legislative questions.¹⁴ Its members are expressly or impliedly privileged from arrest during session, except for treason, felony, or breach of the peace.¹⁵ But their temporary immunity from bodily coercion should not prevent the courts from taking jurisdiction of their personal acts.¹⁶ The performance even of special ministerial duties imposed upon members of state legislatures has been ordered by the court in mandamus proceedings.¹⁷ And in a recent District of Columbia case the court took such jurisdiction over members of a committee of Congress. *Valley Paper Co. v. Smoot et al.*, 38 Wash. L. R. 170 (D. C., Sup. Ct., Feb. 28, 1910). Both the state and federal cases would seem, on principle, to be correct. For the fact that a constitution has conferred the legislative power on a body of men, does not prove that it has entrusted to them individually, or as members of a committee, the final determination of the facts and law involved in the performance of a ministerial act.

FIRE INSURANCE ON PROPERTY USED IN AN ILLEGAL BUSINESS. — A contract to indemnify a lawbreaker for loss which the law imposes as a consequence of his wrongdoing is clearly unenforceable.¹ Insurance against fine or forfeiture for selling liquor without a license would be such a contract, and must be distinguished from insurance against the accidental destruction by fire of property used in the business. It also seems clear that the law should not enforce a fire insurance policy containing a warranty that the property is used for an illegal purpose. But a mere statement in the policy that the property is so to be used may be construed as a permission of such use, rather than a warranty that it shall be so used.

Where the peril is not imposed by law and the contract does not require the illegal use, a more difficult question is presented. On the one hand, when the whole of the property insured is intended to be the immediate

¹² *Hill v. Bigge & Rundell*, 3 Moo. P. C. 465.

¹³ See *Mauran v. Smith*, Governor, 8 R. I. 192; State *ex rel.* *Bisbee v. Drew*, Governor, 17 Fla. 67.

¹⁴ *Ex parte Echols*, 39 Ala. 698.

¹⁵ U. S. CONST., Art. I, sec 6; *In re Armstrong*, (1892) 1 Q. B. 327. See State *ex rel.* *Benton v. Elder*, 31 Neb. 169. In England this privilege has been held not to prevent imprisonment for a criminal contempt of court. *Wellesly's Case*, 2 Russ. & M. 639.

¹⁶ This follows *a fortiori* from the decisions cited in notes 11, 12, and 17. Doubtless their own decision that their legislative duties require their presence elsewhere is a sufficient excuse for their non-appearance in court.

¹⁷ *Attorney General v. Taggart*, 66 N. H. 362; *Ex parte Pickett*, 24 Ala. 91; State *ex rel.* *v. Elder*, *supra*. See *People ex rel. Broderick v. Morton*, 156 N. Y. 136.

¹ Insurance against capture of a ship on an illegal voyage is such a contract. *Potts v. Bell*, 8 T. R. 548.